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A NOTED ACTRESS TO RETIRE FROM THE STAGE



ELLEN TERRY TO QUIT STAGE.

A well-defined rumor to the effect that Ellen Terry, the talented actress, is to leave the stage permanently comes from London. It is said that Miss Terry has succumbed to nervous prostration and that she suffers from loss of memory, a serious affliction for one in her profession. It is reported that she will retire to her country home at Winchelsea in Kent.

IN THE SUPREME COURT OF THE TERRITORY OF HAWAII.

DECEMBER TERM, 1900.

THEODORE F. LANSING, Treasurer of the Territory, v. THEO. H. DAVIES & COMPANY, LIMITED.

ORIGINAL.

SUBMITTED DECEMBER 29, 1900. DECIDED JANUARY 26, 1901.

FREAR, C.J., GALBRAITH AND PERRY, JJ.

Sections 764-768, Penal Laws, which impose a license tax upon the sale of imported goods, are unconstitutional.

OPINION OF THE COURT BY FREAR, C.J.

This is a submission on agreed facts.

The question is whether Sections 764-768 of the Penal Laws, relating to "merchandise licenses" are unconstitutional. These sections provide, among other things, that "the annual fee for a license to sell imported goods, wares and merchandise" shall be \$50 if the gross annual sales are less than \$20,000 and 3% of 1% of the sales if over \$20,000, and impose a penalty upon "any person who shall sell imported goods, wares or merchandise without a license" under these sections.

The defendant is a Hawaiian corporation with its principal place of business in Honolulu. Its sales of goods imported from foreign countries (exclusive of the United States) for the year ending June 30, 1900, amounted to \$661,312.48, and of those brought from the United States, \$915,601.90. If the statute is constitutional as to either or both of these classes of goods the license fee would be \$2,529.92 for one class, \$3,433.50 for the other class and \$5,976.90 for both classes. It is agreed that judgment may be entered for the plaintiff for one of these sums or for the defendant according as the court finds the law.

The statute is in conflict with at least two provisions of the Constitution of the United States, namely, the clause in Art. 1, Sec. 8, which gives to Congress the power, "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and that in Art. 1, Sec. 10, which provides that, "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

The Supreme Court of the United States has held many times that a State tax upon goods in their character as imported goods or goods coming from another State is forbidden by these provisions of the Constitution, and that within the meaning of these provisions it is immaterial whether the tax is laid directly upon the goods themselves or only indirectly in the form of a tax upon the person or the business, as for instance, by charging a license fee for the sale of the goods. See among other cases: *Brown v. Maryland*, 12 Wh. 419; *Ward v. Maryland*, 12 Wall. 418; *Welton v. Missouri*, 91 U. S. 275; *Webber v. Virginia*, 103 U. S. 344; *Walling v. Michigan*, 116 U. S. 446; *Leloup v. Mobile*, 127 U. S. 640; *Voight v. Wright*, 141 U. S. 62.

Judgment for defendant.
Attorney-General E. P. Dole for plaintiff.
Hatch & Silliman for defendant.

HOO LEONG AGAIN IN TOILS

Suspected Chicken Lifter is Hauled in on the Same Old Charge.

Hoo Leong, the alleged hypothe-cator of chickens, who gained fame and discharge some weeks ago on account of a little hen-roost pilikia at Kailahi, has business in the police court again. He has been wanted by the police department for quite a time, but has until last Tuesday succeeded in keeping out of the way. He will appear in court tomorrow morning to answer to a charge of pullet-pinchng.

B. F. Garvey, charged with beating a mule with a rock, was reprimanded and discharged. Apana, who acted as prosecuting witness, told a different story to the one he told the Deputy Sheriff on Tuesday. Then he said Garvey beat both the mule and himself. Yesterday he could not swear to having seen the cruelty alleged to have

been committed, but stated that a woman had told him about it.

Ah Lam left his horse untied and was fined \$5 and costs.

Eight drunks pleaded guilty and paid \$2 and costs each. W. Johnson, also drunk, forfeited his bail.

A deaf mute said to have been very drunk was reprimanded and discharged.

George Summers, whose verbal expressions were too forcible for a public thoroughfare, was fined \$2 and costs. William Young was arrested yesterday afternoon and charged with assault and battery on A. Gonsalves, a hack driver. Complainant claims that Young deceived him to a dark part of Dowsett Lane on Monday night and badly assaulted him with a stick of wood. Young's jealousy of his wife is said to have been the cause of the trouble.

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